

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 16th day of June, 1998

BEFORE

THE HON'BLE MR. JUSTICE V.P. MOHAN KUMAR

WRIT PETITION NO. 31557 OF 1993

BETWEEN :

H.S. Biligirirangachar,  
dead by his wife  
Smt. Jayamma,  
aged about 70 years,  
D.No. 214, K.R.S. Road,  
Melagalli,  
Mysore - 570 016

122 ✓  
.. PETITIONER

(Sri K.S. Venkatasubbaiah and  
Sri H.V. Ramaswamy, Advocates)

A N D :

1. The Assistant Commissioner,  
Mysore Sub-Division,  
Mysore
  2. Tahsildar,  
T. Narasipura Taluk,  
T. Narasipura,  
Mysore District
  3. The Village Account,  
Hemmige Village,  
T. Narasipura Taluk,  
Mysore District
  4. G. Srinivasa Iyengar,  
Dead by L.Rs.
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- 123
- (a) Smt. Meera,  
Wife of 4th Respondent,  
aged about 57 years
  - (b) Latha, D/o 4th Respondent,  
aged about 32 years
  - (c) Govinda, S/o 4th Respondent,  
aged about 27 years
  - (d) Vanishree, D/o 4th Respondent,  
aged about 24 years
  - (e) Roopa, D/o 4th Respondent,  
aged about 22 years

L. Rs. (a), (b), (c), (d), (e), are residing together with Smt. Meera, at No. 271, I 'D' Main Road, Kengeri Upanagara, Bangalore - 560 060

.. RESPONDENTS

Note : Respondent 4 b to e are deleted  
vide Court Order dt. 15.9.93

(Sri B.M. Krishna Bhat for R - 4A,  
Sri C. Ramakrishna, H.C.G.P. for R-1 to 3  
R - 4 B to E deleted)

Writ Petition filed under Articles 226 & 227 of the Constitution of India, praying to; issue writ or certiorari or any other appropriate writ of order and quash the impugned order in ANNEXURE 'C' in No. RRT.65/90-91, dated 7-5-1993, made by the 1st respondent herein and allow this writ petition with costs, in the interest of justice, etc.

This Writ Petition coming on for Preliminary hearing in "B" Group, this day, the Court made the following :

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124

The petitioner challenges Annexure-C order passed by the 1st respondent. It is alleged that the original Khatedar of the property bearing Sy.Nos.110/3, 5/7 and 112/2 of Hemmige village, T.Narasipur Taluk, was one Kalyanamma, w/o late K.Singalachar. It is alleged that the petitioner herein made an application to the 2nd respondent for change of Khata on the alleged death of the aforesaid Kalyanamma. That application was allowed by the 2nd respondent. Against the said order, the 4th respondent filed an appeal before the 1st respondent. He claimed title to the property under Annexure-B sale deed. The Appellate Authority, without anything more, set aside the order of the 2nd respondent and transferred the Khata in the name of the 4th respondent. This order Annexure-C is challenged before me in these proceedings.

2. I have heard Mr.K.S.Venkatasubbaiah, learned counsel for the petitioner; Mr.C.Ramakrishna, learned Government Pleader appearing for respondents Nos.1 to 3; and Mr.B.M.Krishna Bhat, learned counsel for respondent No.4.

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125

3. I do not think the impugned order can be sustained. The primary question is that the original Khatedar is said to be one Kalyanamma, wife of late K.Singalachar. In the application to transfer Khata, made by the 4th respondent, it has to be established that there had been divesting of title of the property from that of the aforesaid Kalyanamma in favour of the 4th respondent. Unless that title is established, it is not possible for the Appellate Authority to change the name of the Khatedar. There should be documents to establish that the title of the property stands transferred by document inter vivos or by succession in favour of the 4th respondent. This crucial aspect has not been borne in mind by the Appellate Authority while passing the impugned order. Mere production of the documents is not sufficient that there has been transfer of the property. The authority should consider as to whether the original Khatedar was Kalyanamma and if, as a matter of fact, that title of the Khatedar has been lost or transferred to the 4th respondent, a finding in this behalf has to be entered before interfering with the order passed by the 2nd respondent. Therefore, I set aside Annexure-C order passed by the 1st respondent.

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126

The 1st respondent is directed to take back the appeal filed by the 4th respondent to his file and after hearing both sides, pass fresh orders in accordance with law. With the above direction, the writ petition is disposed of.

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Sd/-  
JUDGE

Pkc.

